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The Declaration on the Rights of Indigenous Peoples: A Process

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A UN Declaration on the Rights of Indigenous Peoples will be the first international instrument of its kind. A draft of the Declaration, which recognizes a wide range of fundamental freedoms and basic rights of indigenous peoples, has been formulated in conjunction with representatives of indigenous peoples and organizations in global arenas formerly constituted and monopolized by states. Yet, after ten years of deliberations, the drafted text of the Declaration has not been approved within the UN. While we await final approval, the process itself has produced significant advances in indigenous representation in international debates that affect them.

The formation of a United Nations Declaration on the Rights of Indigenous Peoples was first proposed in a series of resolutions submitted between 1982 and 1985 by the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN's Economic and Social Council (ECOSOC). A Working Group on Indigenous Populations was formed as a subsidiary organ to the Sub-Commission to promote and protect indigenous peoples' rights by developing international standards, measures, and review mechanisms. In 1985 the Working Group began its principal task -- the formulation of a Declaration on the Rights of Indigenous Peoples.

The Working Group, and the innovative procedures adopted by it, has contributed to a growing awareness of indigenous issues at local, national, and international levels. Furthermore, the Working Group expanded participation in UN decision-making in unprecedented ways by reformulating conventional UN rules for procedures to enable representatives of indigenous communities and organizations to participate in its deliberations. Using a work model not previously employed by UN entities, the Working Group, which is comprised of member states of the Commission on Human Rights, relaxed existing UN regulations to

open debate to non-member indigenous representatives. It has met annually since its first meeting in Geneva, which was attended by 50 people. Today, with over 800 participants, it is one of the largest UN forums on human rights. By facilitating and encouraging dialogue between governments and indigenous peoples, the Working Group has played a critical role in increasing the voices and representation of indigenous people in the formation of international policies.

After nearly a decade of preparation, the Working Group in 1993 presented a Draft Declaration for review. Authors of the document noted that the rights outlined within it must be considered a minimum standard for the survival and well-being of the world's indigenous peoples who represent 5,000 languages and cultures, inhabiting more than 70 countries in the world.

The Draft Declaration on the Rights of Indigenous Peoples contains 45 articles that specify a wide range of rights, including self-determination in political, religious, linguistic, educational, and other cultural matters; collective and inalienable rights to resources, including land and the natural resources found within indigenous territories; ownership and legal protection of cultural and intellectual property; just compensation for violation of indigenous rights or property; and prior, informed consultation and participatory consent involving any activity that impacts on indigenous peoples. The Declaration also stipulates the necessity of fair and mutually acceptable procedures for resolving violations of human rights that arise between indigenous peoples and nation states, proposing mechanisms for arbitration that include national and international courts. The Declaration also defines and puts in place prohibitions against ethnocide and genocide.

It was hoped that the Draft Declaration on the Rights of Indigenous Peoples would be examined and approved by the General Assembly of the UN within the framework of the International Decade of the World's Indigenous People (1995-2004). Although the Working Group within the Commission on Human Rights held annual meetings with participation from government representatives and indigenous organizations each year between 1995 and 2004, they were not able

to arrive at a consensus. As the year 2004 came to a close, several alternative drafts were proposed but none agreed upon.

Significant polarization persists among the nation-states that must approve the document. To date, only two articles of a total of forty-five have been provisionally adopted. Those adopted refer to areas of *individual*, rather than collective, rights of indigenous peoples. Entrenched divisions characterize areas involving sovereignty, such as self-determination and collective rights over territory and resources. Disagreement among the states makes negotiation difficult. For example, in 2004, while Canada promoted rights to self-determination, it withheld approval of land rights at the same time. In the same year, France, in contrast, supported full recognition of indigenous land rights but raised questions of national unity concerning the wording on self-determination. A portion of text over which there is considerable debate is Draft Declaration Article 3, which reads, "Indigenous people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development."

At the closing 2004 meetings, a faction of the indigenous representatives, reluctant to compromise hard-won gains through weakening negotiations, called a Spiritual Fast (or hunger strike) accompanied by an Appeal of Indigenous Peoples at the United Nations Palais des Nations in Geneva. These peaceful protests came to an end when the Office of the Commission on Human Rights agreed to recommend to the General Assembly a second International Decade of the World's Indigenous Peoples following the first, which was then about to close imminently, in December 2004.

Historically displaced by powerful expanding states, many indigenous peoples have become minorities within sovereign nations. Although some nation-states have instituted laws guaranteeing original rights to the communal lands held over millennia by aboriginal peoples, many indigenous communities have been expelled from their lands, prohibited from using their languages and practicing their life styles. Indigenous peoples are today among the most vulnerable and

poorest populations in the world. In recent years, however, a number of initiatives have created a widening political space for representation by indigenous peoples in global forums. Through international mechanisms such as the UN Permanent Forum on Indigenous Issues, the appointment of a UN Rapporteur on the Situation of the Human Rights of Indigenous Peoples, and the deliberations within the Working Group to arrive at a Declaration on the Rights of Indigenous Peoples, indigenous peoples have become increasingly involved in the shaping of international procedures involving their human and cultural rights.

The establishment of a Declaration on the Rights of Indigenous Peoples will represent an achievement for indigenous peoples that has taken decades of persistent effort from within the United Nations and outside it. It is the outcome of many accumulated events and the participation of actors from numerous sectors of civil society, many precluded from UN discourse until brought into it by the processes initiated by the Working Group of the Commission on Human Rights for a Draft Declaration on the Rights of Indigenous Peoples.